IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5706 OF 2005

Moally Garments & others. ... Applicants
Versus.
M/s.D.M.Fabrics & anr. ... Respondents.

Shri B.M.Raikar for the Applicants.

Shri Anil Agarwal for the Respondent No.1.

Ms.S.D.Shinde, A.P.P. for State.

CORAM : ABHAY S. OKA, J.

DATED : 14th Sept., 2005.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned Advocate appearing for the Respondent No.1. The prayer in this Application is for transfer of a complaint filed by the Respondent No.1 under section 138 of the Negotiable Instruments Act, 1881 which is pending in the Court of the learned Judicial Magistrate First Class, 2nd Court at Thane, to the Court of the learned Metropolitan Magistrate, 20th Court at Mazgaon. It is contended that there are complaints filed under section 138 of the said Act of 1881 by the another firm by name Suman Trading Co. against the Applicants which are pending in the Court at Mazgaon. The prayer for transfer is on the ground of convenience. The application is opposed by the Respondent No.1 by filing a reply.

2. The complaint which is pending in the Court at Thane is of the year 1999. The prayer in the application is for transfer of the said case to the Court of Metropolitan Magistrate at Mazgaon.

3. It is contended that though the complaints which are filed in the Court of the Metropolitan Magistrate at Mazgaon are filed by other firms, the said firms and the Respondent No.1 herein are represented by the same Constituted Attorney. It is not in dispute that the complaint which is pending in the Thane Court is of the year 1999. There is substance in the grievance made by the Respondent No.1 that if the said complaint is transferred to Mazgaon Court, it will result in delay in disposal of the complaint. It is not in dispute that the said complaint in the Court at Thane is ready for hearing. In the affidavit-in-reply it is disclosed that when an application was made by Suman Trading Co. which is the complainant in the pending cases in the Mazgaon Court for seeking permission to lead common evidence in two complaints, the same was opposed by the Applicants and the said Application came to be rejected. Thus it is obvious that even if the complaint pending in Thane Court is transferred to the Court at Mazgaon, it will have to be heard separately. In my view, no case is made out for transfer as the transfer may result in delay in disposal of the case under section 138 of the

said Act of 1881.

4. At this stage the learned Advocate for the Applicant stated that the Applicant No.2 is not keeping good health and that may be considered as a ground for transfer. The said ground is not pleaded in the application. If the Applicant No.2 is not keeping good health, the Applicant No.2 may apply for exemption from personal appearance. The Application is rejected.

Judge.